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10/520,827	08/09/2005	Rex Allen Nisbet	6952P003	2712
8791 7590 04/10/2009 BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP 1279 OAKMEAD PARKWAY SUNNYVALE, CA 94085-4040				
EXAMINER				
AMINZAY, SHAIMA Q				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/520,827

**Applicant(s)**

NISBET, REX ALLEN

**Examiner**

SHAIMA Q. AMINZAY

**Art Unit**

2618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 March 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 8/9/2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

### ***DETAILED ACTION***

This office action is in response to applicant's amendment/remarks filed 3/16/2009.

Claims 1-18 and new added claims 19-22 are pending.

**Note:** *In this office action the punctuation colon (":") is used as separation between selected lines and paragraph/column (e.g. 2:1-5 means paragraph or column 2, and lines 1-5).*

### ***Response to Arguments***

1. Response to argument with respect to the rejected claims 1-18 under Claim Rejections-35 U.S.C. 103(a), is **moot** as the amendment necessitated the **new ground(s)** of rejection, therefore, the Claim Rejections-35 U.S.C. 103(a) with respect to claims 1-18 withdrawn.

### ***Claim Objections***

2. Claims 19-22 are objected to because, the phrase "prioritised" is not correct, it should change to "-- prioritized --". Examiner requests a correction or clarification.

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claim 18 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim 18 fails to fall within a statutory category of invention, the claim preamble is directed to the an abstract idea as the claim is a method with an apparatus “*A communication network or a base station for a network that implements or assists in a method according to claim 1*”, claim 1 is a method claim, limitations of claim 18 includes an apparatus base station with a method claim limitations, claim 18 does not produce a tangible result and could be considered as providing non-functional descriptive material, therefore the claim is directed solely to non-functional data, and it’s clearly not directed to a composition of matter which is non-statutory subject matter under 35 USC 101.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention

4. Claim 18 is rejected under 35 U.S.C. 112 Second Paragraph, claim 18 recites “*A communication network or a base station for a network that implements or assists in a method*”, there is insufficient antecedent basis for this limitation in the claim, and it

appears that the applicant wants an independent claim 18, therefore, claim 18 shall be written in correct format as an independent claim.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102:

A person shall be entitled to a patent unless –  
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-5, 11-13, and 18-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Grube (Grube et al., U. S. Patent No. 5387905).

Regarding claim 1, Grube discloses a method of operating a packet network having base stations for communication with mobile units (*e.g.*, Fig 1, 3, 3:33-51, 4:44-48, the nodes (base station) 102, 122, 142, 162, 182 with repeaters (104, 124, 144, 164, & 184), and the vehicle (mobile) units 108, 110, 112, 128, 130, 132, 148, 150, 152, 168, 170, 172, 188, 190, & 192), comprising:

initiating a call involving a group of mobile units (*e.g.*, Fig 1, 3, 1:49-55, 2:15-19, 5:8-10, initiating a call that includes a talk-group of mobile units),

receiving a signal at two or more of the base stations from one of the mobile units (*e.g.*, Fig 1, 3, 5:8-34, the signals are being received at the base station 102, 122 from the mobile station 112),

determining at each of the base stations a respective priority parameter for the signal as

received at the base station (e.g., Fig 1, 3, 4:44-55, 5:8-34, at each of the base stations (e.g., 102, 142, 122) configured priority of received signal),

adding the priority parameters to at least some packets of the respective signals to form prioritized signals (e.g., Fig 3, 4:44-55, 68, 5:8-34, the priority is included in the transmission packets (e.g., 306, 310) creating prioritized transmission packets "combined PTT transmission and the indicia of priority"),

transmitting the prioritized signals containing the respective priority parameters to the network (e.g., Fig 3, 4:44-55, 68, 5:8-34, the packets (e.g., 306, 310) with priority is being transmitted to the communication network),

receiving the prioritized signals at base stations in the network (e.g., Fig 3, 4:44-55, 68, 5:8-34, the packet (e.g., 306, 310) with priority is being received at the base stations (e.g., 142, 122)),

selecting at each of the base stations (e.g., 102, 122, 124), a prioritized signal for transmission in the network to mobile units in the group (e.g., Fig 3, 4:44-55, 68, 5:1-34, the base station (e.g., 102, 122, 124) decides on prioritized packet (e.g., 306, 310) transmission to mobile units (e.g., 110, 152, 130)), and

transmitting the selected signal to the mobile units (e.g., Fig 3, 4:44-55, 68, 5:1-34, transmission of selected packets to mobile units (e.g., 110, 152, 130)).

Regarding claim 11, Grube discloses a method of operating a packet network having base stations for communication with mobile units (e.g., Fig 1, 3, 3:33-51, 4:44-48, the nodes (base station) 102, 122, 142, 162, 182 with repeaters (104, 124, 144, 164, & 184),

*and the vehicle (mobile) units 108, 110, 112, 128, 130, 132, 148, 150, 152, 168, 170, 172, 188, 190, & 192), comprising:*

*initiating a call involving a group of mobile units (e.g., Fig 1, 3, 1:49-55, 2:15-19, 5:8-10, initiating a call that includes a talk-group of mobile units),*

*receiving signals at two or more of the base stations from two or more of the units (e.g., Fig 1, 3, 5:8-34, the signals are being received at the base station 102, 122 from the mobile station 112),*

*determining at each of the base stations, a respective priority parameter for each of the signals received at a base station (e.g., Fig 1, 3, 4:44-55, 5:8-34, at each of the base stations (e.g., 102, 142, 122) configured priority of received signal),*

*adding the priority parameters to at least some packets of the respective signals to form prioritized signals (e.g., Fig 3, 4:44-55, 68, 5:8-34, the priority is included in the transmission packets (e.g., 306, 310) creating prioritized transmission packets, "combined PTT transmission and the indicia of priority"),*

*transmitting the prioritized signals containing the respective priority parameters to the network (e.g., Fig 3, 4:44-55, 68, 5:8-34, the packets (e.g., 306, 310) with priority is being transmitted to the communication network),*

*receiving the prioritized signals at base stations in the network (e.g., Fig 3, 4:44-55, 68, 5:8-34, the packet with priority is being received at the base stations (e.g., 142, 122)),*

*selecting at each of the base stations (e.g., 102, 122, 124), a prioritized signal for transmission to mobile units in the group (e.g., Fig 3, 4:44-55, 68, 5:1-34, the base station (e.g., 102, 122, 124) decides on prioritized packet (e.g., 306, 310) transmission to*

*mobile units (e.g., 110, 152, 130)), and*

*transmitting the s selected signal having a selected priority parameter to the units (e.g., Fig 3, 4:44-55, 68, 5:1-34, transmission of selected packets (e.g., 306, 310) to mobile units (e.g., 110, 152, 130)).*

Regarding claim 19, Grube discloses a method of operating a base station in a packet network during a group call between mobile units (*e.g., Fig 1, 3, 3:33-51, 4:44-48, the nodes (base station) (e.g., 102) in a talk-group with the vehicle (mobile) units 110, 112, 130, 152*), the method comprising:

*receiving a signal from a mobile unit in the group call (e.g., Fig 1, 3, 5:8-34, the signals are being received at the base station (102) from the mobile station (112));*

*determining a priority parameter for the received signal (e.g., Fig 1, 3, 4:44-55, 5:8-34, at the base stations (e.g., 102) configured priority of received signal);*

*adding the parameter to at least some packets of the received signal to form a prioritised signal (e.g., Fig 3, 4:44-55, 68, 5:8-34, the priority is included in the transmission packets creating prioritized transmission packets "combined PTT transmission and the indicia of priority"; and*

*transmitting the prioritised signal to the network (e.g., Fig 3, 4:44-55, 68, 5:1-34, the packets with priority is being transmitted to the network and to mobile units).*

Regarding claim 21, Grube discloses a method of operating a base station in a packet network during a group call between mobile units (*e.g., Fig 1, 3, 3:33-51, 4:44-48, the nodes (base*



*station) (e.g., 102) in a talk-group with the vehicle (mobile) units 110, 112, 130, 152), the method comprising:*

*receiving prioritised signals containing respective priority parameters from two or more other base stations in the network (e.g., Fig 1, 3, 5:8-34, the packet with priority (e.g. 306, 310) being received by the mobile station (130) from the other base stations (e.g., 102, 142));*

*selecting one of the received signals according to the received priority parameters, and transmitting the selected signal to units in the group call (e.g., Fig 3, 4:44-55, 68, 5:1-34, the base station (e.g., 102, 122, 124) decides on prioritized packet (e.g., 306, 310) transmission to mobile units (e.g., 110, 152, 130).*

Regarding claims 2, 12, and 20, Grube teaches all the limitations in claims 1, 11, 19, and further, Grube teaches ceasing transmission to the network (*e.g., Fig 1, 3, 3:33-51, 4:44-48*), of a signal received from the mobile unit, after determining that the signal has a priority lower than that of a corresponding prioritized signal received from the network (*e.g., 2:64-68, 3:1-4, 4:53-60, 6:54-64*).

Regarding claim 3, Grube teaches all the limitations in claim 1, and further, Grube teaches transmission of a signal to the network (*e.g., Fig 1, 3, 3:33-51, 4:44-48*), received from the mobile unit, after determining that the signal has a priority greater than that of a corresponding prioritized signal received from the network (*e.g., 2:64-68, 3:1-4, 4:53-60, 6:54-64*).

Regarding claim 4, Grube teaches all the limitations in claim 3, and further, Grube

teaches waiting for a predetermined time before commencing transmission of the signal to the network (*e.g.*, 4:53-60, 6:42-48).

Regarding claim 5, Grube teaches all the limitations in claim 3, and further, Grube teaches discarding at least one packet of the signal transmitted to the network (*e.g.*, 2:64-68, 3:1-4, 4:53-60, 6:54-64).

Regarding claim 13, Grube teaches all the limitations in claim 11, and further, Grube teaches wherein the priority parameter is determined by a priority allocated to the two or more units (*e.g.*, *Fig 1*, 3, 5:8-34).

Regarding claim 18, Grube teaches all the limitations in claim 1, and further, Grube teaches a communication network or a base station for a network that implements or assists in a method (*e.g.*, *Fig 1*, 3, 3:33-51, 4:44-48).

Regarding claim 22, Grube teaches all the limitations in claim 21, and further, Grube teaches selecting a different one of the received signals according to changes in the respective priority parameters (*e.g.*, 2:64-68, 3:1-4, 4:53-60, 6:54-64).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action: in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made

6. Claims 6-10 and 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grube (Grube et al., U. S. Patent No. 5387905) in view of Gopalakrishnan (Gopalakrishnan et al. U. S. Patent No. 6,836,666).

Regarding claims 6 and 14, Grube teaches all the limitations in claims 1, 11, and further, Grube teaches wherein the priority parameter is determined by reference to a *[quality of the]* respective signal received from the mobile unit, and the signal transmitted to the units is selected *[according to highest quality]* (e.g., 2:64-68, 3:1-4, 4:53-60, 6:54-64). Grube does not specifically teach the transmission quality.

In a related art dealing with mobile communication system (e.g., 1:39-67, 2:1-3), Gopalakrishnan teaches the priority parameter according to highest quality (e.g. 1:62-67, 2:1-3, 4:35-43, *the priority parameter based on improved quality*).

Therefore, it would have been obvious to one of ordinary skill in the art at the time invention was made to include Gopalakrishnan's mobile transmission priority based on quality with Grube mobile transmission based on priority to provide the mobile

communication system with transmission quality control including interference control “to prevent the occurrence of catastrophic levels of interference while maximizing the utilization of resources” (*Gopalakrishnan, e.g., 1:59-61*).

Regarding claims 7 and 15, Grube in view of Gopalakrishnan teach all the limitations in claims 6, 14, and further, Gopalakrishnan teaches wherein the quality is an error count for part or all of the respective signal received from the mobile unit (*e.g. 1:62-67, 2:1-3, 6:44-54, 65-67*).

Regarding claims 8 and 16, Grube in view of Gopalakrishnan teaches all the limitations in claims 6, 14, and further, Grube teaches wherein the quality is the received signal strength of the respective signal received from the mobile unit (*e.g. 1:62-67, 2:1-3, 6:44-54, 65-67*).

Regarding claims 9 and 17, Grube in view of Gopalakrishnan teaches all the limitations in claims 6, 14, and further, Grube teaches wherein the quality is the signal to noise ratio of the respective signal received from the mobile unit (*e.g. 1:62-67, 2:1-3, 6:44-54, 65-67*).

Regarding claim 10, Grube in view of Gopalakrishnan teaches all the limitations in claim 6, and further, Grube teaches wherein the priority parameter of a signal is set to a termination value when the signal ends (*e.g. 3:28-29, 6:54-67*).

### ***Conclusion***

The prior art made of record considered pertinent to applicant's disclosure, see PTO-892 form.

Applicant's amendment necessitated the **new ground(s)** of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

***Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shaima Q. Aminzay whose telephone number is 571-272-7874. The examiner can normally be reached on 7:00 AM -4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mathew D. Anderson can be reached on 571-272-4177. The fax number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/SHAIMA Q. AMINZAY/  
Examiner, Art Unit 2618

April 8, 2009

/Matthew D. Anderson/  
Supervisory Patent Examiner, Art Unit 2618